

INITIAL STATEMENT OF REASONS

Adopt Commission Regulation 1208

PROBLEM STATEMENT

On September 30, 2021, Governor Newsom signed Senate Bill (SB) 2. SB 2 made significant changes to the existing Government and Penal Codes, respectively. These changes provide for additional peace officer hiring eligibility requirements. SB 2 also grants POST the authority to certify all peace officers in California, and subsequently take action against those certifications, should POST determine serious misconduct occurred. While the peace officer eligibility hiring requirements went into effect on January 1, 2022, the remaining changes to Government and Penal Codes went into effect on January 1, 2023.

PURPOSE

POST proposes to amend Commission Regulation 1208 – Temporary Suspension of Certification:

- To provide peace officers with information regarding their right to respond to an Order of Immediate Temporary Suspension from the POST Executive Director.

NECESSITY

After a thorough review of the implementation of SB 2 on existing Commission regulations, it was determined that it was prudent to provide peace officers an opportunity to respond to an Order of Immediate Temporary Suspension from the POST Executive Director to ensure the information relied upon in the issuance of the order is current and accurate. The proposed regulation outlines the process for responding to the Order of Immediate Temporary Suspension.

- It is necessary to amend subsection (a) to correct grammatical errors and properly identify an Immediate Temporary Suspension (ITS) by its full and correct title. This is necessary to ensure accuracy in references and naming conventions to avoid confusing an ITS ordered by the POST Executive Director with a suspension ordered by the Commission.
- It is necessary to adopt subsection (a)(1)(A) to establish a peace officer's right to respond to the POST Executive Director, if they wish to assert an Order of Immediate Temporary Suspension should be withdrawn based on inaccuracy in the facts relied upon which led to the issuance of the Order. In addition to setting forth this right, this subsection establishes that there must be sufficient evidence that the grounds for an ITS did not exist, and sets forth the process by which the response must be submitted. It is necessary to establish this right and the accompanying procedures to ensure peace officers have an opportunity to respond to information POST is relying upon to effectuate a temporary hold on the peace officer certification.
- It is necessary to adopt subsection (a)(1)(B) to establish the process by which the POST Executive Director will consider and respond to the facts, evidence, and arguments presented in the response from the peace officer subject to an ITS.
- It is necessary to adopt subsection (a)(1)(C) to establish the process by which a peace officer who was issued an ITS, based upon an arrest or indictment of a crime identified in Government Code (GC) section 1029, may notify the POST Executive Director if the applicable prosecutorial body does not file disqualifying charges against the peace officer and request that those additional facts be taken into consideration. It is also necessary to

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establish the process by which the POST Executive Director will consider and respond to the additional facts.

- It is necessary to amend subsection (a)(2) to specify that the Commission shall “schedule all required further proceedings” in accordance with the Bagley-Keene Open Meeting Act, to reinforce that all matters before the Commission are subject to the Bagley-Keene Open Meeting Act.

BENEFITS

The specific benefits anticipated by the proposed regulation will be to establish an opportunity for peace officers’ to respond to an Order of Immediate Temporary Suspension from the POST Executive Director and the process for doing so.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact of Jobs/New Business:

POST sets law enforcement selection, certification, and training standards for its member law enforcement agencies and training providers. Participation in the POST program is voluntary and limited to governmental law enforcement agencies. The proposed regulation will only have a direct effect on law enforcement agencies. Therefore, the proposed regulation will neither create nor eliminate jobs in the state of California. Additionally, they will not result in the elimination of existing businesses, the ability to expand businesses in the state of California or discourage qualified businesses from becoming providers of law enforcement training.

Assessment:

POST has found that the proposed amendments will have no effect on California businesses, including small businesses, nor will the changes impact the elimination or creation of jobs because the regulatory action addresses requirements that are currently in place as they relate to the provision of due process to peace officers subject to an Order of Immediate Temporary Suspension. The proposed regulation only affects California law enforcement agencies and creates changes in existing processes that will not require additional training or take away from existing responsibilities.

Benefits:

The benefits of proposed amendments to the regulation will increase the efficiency of the state of California in delivering high quality services to stakeholders. Thus, the law enforcement standards are maintained and effective in preserving peace, protection of public health, safety, and welfare of California. The proposed amendments will have no impact on worker safety or the state’s environment.

POST concludes that it is:

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- (1) unlikely that the proposal will create or eliminate any jobs for law enforcement agencies in the state of California;
- (2) unlikely that the proposal will create nor eliminate any businesses;
- (3) unlikely that the proposal will result in the expansion of businesses currently doing business in the state; and
- (4) likely benefits to the public are preserving the peace, protection of public health, safety, and welfare in California.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS RELIED UPON

POST did not rely on any technical, theoretical, and/or empirical studies or reports. POST did not rely on any additional documents other than SB 2 and GC §11505(c).

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

POST has determined that the proposed regulation will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability to compete with businesses in other states. POST has found the proposed regulation will have no effect on California businesses, including small businesses, because the regulation only applies to law enforcement agencies and addresses law enforcement agency responsibilities. The proposed regulation will only have a direct effect on law enforcement agencies and does not impact California businesses, including small businesses.

CONSIDERATION OF ALTERNATIVES

POST considered no alternatives to the proposed regulations but welcomes public comments suggesting reasonable alternatives that are proposed as less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute.